

AMENDED IN SENATE MAY 6, 2014

**SENATE BILL**

**No. 1283**

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**Introduced by Senator Galgiani**

February 21, 2014

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An act to amend Sections 11357.5 and 11375.5 of the Health and Safety Code, *and to amend Section 1210 of the Penal Code*, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 1283, as amended, Galgiani. Controlled substances.

~~Existing~~

(1) *Existing* law makes it a misdemeanor to sell, dispense, distribute, furnish, administer, or give, to offer to sell, dispense, distribute, furnish, administer, or give, or to possess for sale, any synthetic stimulant compound or any specified synthetic stimulant derivative, including naphthylpyrovalerone and 2-amino-1-phenyl-1-propanone.

Existing law makes it a misdemeanor to sell, dispense, distribute, furnish, administer, or give, or offer to sell, dispense, distribute, furnish, administer, or give, or possess for sale any synthetic cannabinoid compound or any synthetic cannabinoid derivative.

This bill would also make the use or possession of those specified *synthetic stimulant compounds or synthetic stimulant derivatives, or any synthetic cannabinoid compound or any synthetic cannabinoid derivative a misdemeanor*. *derivative a crime. The bill would provide that a first offense is punishable as an infraction, a 2nd offense is punishable as an infraction or a misdemeanor, and a 3rd or subsequent offense is punishable as a misdemeanor.* By creating new crimes, this bill would impose a state-mandated local program upon local governments.

*The bill would request the Luskin School of Public Affairs at the University of California, Los Angeles, or would require Judicial Council to contract with another entity in the event the University does not comply with the request, to design an evidence-based education program and treatment model for participation in by individuals convicted of the above described crimes, as provided. The bill would require Judicial Council to approve the program and treatment model upon a finding that courts can successfully implement the program and education model.*

*The bill would authorize a defendant, in his or her discretion, to elect to participate in the evidence-based education program and treatment model, if convicted of the above described crimes, in which case the execution of sentence is stayed and either, in the court's discretion, an amount less than the total amount of any fine imposed will be deposited into an escrow account or the person will be ordered to perform community service. The bill would specify that upon successful completion of the program, the case against the defendant is dismissed and any moneys deposited into the escrow account are returned to the defendant.*

*(2) Existing law, the Substance Abuse and Crime Prevention Act of 2000, enacted by Proposition 36 at the November 7, 2000, general election, requires any person convicted of a nonviolent drug possession offense to receive probation. As a condition of probation, a defendant is required to participate in, and complete, an appropriate drug treatment program. Amendment of the act by the Legislature requires a 2/3 vote of both houses of the Legislature. The act requires all amendments to it to further the act and be consistent with its purposes.*

*Existing law defines "nonviolent drug possession offense" for purposes of the act to mean the unlawful personal use, possession for personal use, or transportation for personal use of a specified controlled substance, or being under the influence of a controlled substance, as specified.*

*This bill would additionally define a "nonviolent drug possession offense" to include the use or possession of a synthetic stimulant compound, synthetic stimulant derivative, synthetic cannabinoid compound, or synthetic cannabinoid derivative.*

*The bill would declare that its provisions further the purposes of the act.*

*The bill would specify that a defendant convicted of any offense described in (1) above who was granted probation and required to*

*participate in a drug treatment program, and who does not successfully complete that drug treatment program, is presumed to be eligible for participation in any available drug court program.*

~~The~~

(3) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11357.5 of the Health and Safety Code  
2 is amended to read:

3 11357.5. (a) Every person who ~~uses, possesses, sells,~~  
4 dispenses, distributes, furnishes, administers, or gives, or offers  
5 to sell, dispense, distribute, furnish, administer, or give, or  
6 possesses for sale any synthetic cannabinoid compound, or any  
7 synthetic cannabinoid derivative, to any person, is guilty of a  
8 misdemeanor punishable by imprisonment in a county jail not  
9 exceeding six months, or by a fine not exceeding one thousand  
10 dollars (\$1,000), or by both that fine and imprisonment.

11 (b) (1) *Every person who uses or possess any synthetic*  
12 *cannabinoid compound, or any synthetic cannabinoid derivative,*  
13 *is guilty of a public offense punishable as follows:*

14 (A) *A first offense is an infraction punishable by a fine not*  
15 *exceeding two hundred fifty dollars (\$250).*

16 (B) *A second offense is an infraction punishable by a fine not*  
17 *exceeding two hundred fifty dollars (\$250) or a misdemeanor*  
18 *punishable by imprisonment in a county jail not exceeding six*  
19 *months, a fine not exceeding five hundred dollars (\$500), or by*  
20 *both that fine and imprisonment.*

21 (C) *A third or subsequent offense is a misdemeanor punishable*  
22 *by imprisonment in a county jail not exceeding six months, or by*  
23 *a fine not exceeding one thousand dollars (\$1,000), or by both*  
24 *that fine and imprisonment.*

25 (2) *A defendant convicted of a violation of paragraph (1), may,*  
26 *in his or her discretion, elect to participate in the education*

1 *program designed and implemented pursuant to paragraph (3). If*  
2 *that election is made, execution of the sentence imposed pursuant*  
3 *to paragraph (1) shall be stayed and either an amount less than*  
4 *the total amount of any fine imposed shall be deposited in an*  
5 *escrow account or the person shall perform community service.*  
6 *In determining whether to require a deposit or the performance*  
7 *of community service, the court shall consider the nature of the*  
8 *sentence to be stayed, the defendant's ability to pay a deposit, and*  
9 *the defendant's preference. Upon successful completion of the*  
10 *education program, the case against the defendant shall be*  
11 *dismissed and any moneys deposited into an escrow account shall*  
12 *be returned to the defendant.*

13 *(3) (A) The Lusk School of Public Affairs at the University*  
14 *of California, Los Angeles is requested to design, or designate*  
15 *another entity to design, an evidence-based education program*  
16 *and treatment model for individuals convicted of a violation of*  
17 *paragraph (1) of subdivision (b) or a violation of paragraph (1)*  
18 *of subdivision (b) of Section 11375.5. If the university does not*  
19 *comply with that request, the Judicial Council shall contract with*  
20 *another entity to design that education program and treatment*  
21 *model.*

22 *(B) Prior to implementing the education program and treatment*  
23 *model designed pursuant to subparagraph (A), the Judicial Council*  
24 *shall approve that education program and treatment model, upon*  
25 *finding that courts can successfully implement it. During the*  
26 *approval process, the Judicial Council may consult with the*  
27 *Substance Use Disorder Services Divisions of the State Department*  
28 *of Health Care Services.*

29 *(C) Upon approval of the education program and treatment*  
30 *model pursuant to subparagraph (B), the Judicial Council shall*  
31 *assist courts in obtaining educational materials required to*  
32 *implement, and in implementing, that education program and*  
33 *treatment model. During the implementation process, the Judicial*  
34 *Council may consult with the Substance Use Disorder Services*  
35 *Divisions of the State Department of Health Care Services.*

36 *(4) Notwithstanding any other law, a defendant convicted of a*  
37 *violation of paragraph (1) who was granted probation and required*  
38 *to participate in a drug treatment program pursuant to Section*  
39 *1210.1 of the Penal Code, and who does not successfully complete*

1 *that drug treatment program shall be presumed eligible for*  
2 *participation in any available drug court program.*

3 ~~(b)~~

4 (c) As used in this section, the term “synthetic cannabinoid  
5 compound” refers to any of the following substances:

6 (1) 1-pentyl-3-(1-naphthoyl)indole (JWH-018).

7 (2) 1-butyl-3-(1-naphthoyl)indole (JWH-073).

8 (3) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole  
9 (JWH-200).

10 (4) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol  
11 (CP-47,497).

12 (5) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol  
13 (cannabicyclohexanol; CP-47,497 C8 homologue).

14 SEC. 2. Section 11375.5 of the Health and Safety Code is  
15 amended to read:

16 11375.5. (a) Every person who ~~uses, possesses, sells,~~  
17 ~~dispenses, distributes, furnishes, administers, or gives, or offers~~  
18 ~~to sell, dispense, distribute, furnish, administer, or give, any~~  
19 ~~synthetic stimulant compound specified in subdivision (b), (c), or~~  
20 ~~any synthetic stimulant derivative, to any person, or who possesses~~  
21 ~~that compound or derivative for sale, is guilty of a misdemeanor~~  
22 ~~punishable by imprisonment in a county jail not exceeding six~~  
23 ~~months, or by a fine not exceeding one thousand dollars (\$1,000),~~  
24 ~~or by both that fine and imprisonment.~~

25 (b) (1) *Every person who uses or possess any synthetic stimulant*  
26 *compound specified in subdivision (c), or any synthetic stimulant*  
27 *derivative, is guilty of a public offense punishable as follows:*

28 (A) *A first offense is an infraction punishable by a fine not*  
29 *exceeding two hundred fifty dollars (\$250).*

30 (B) *A second offense is an infraction punishable by a fine not*  
31 *exceeding two hundred fifty dollars (\$250) or a misdemeanor*  
32 *punishable by imprisonment in a county jail not exceeding six*  
33 *months, a fine not exceeding five hundred dollars (\$500), or by*  
34 *both that fine and imprisonment.*

35 (C) *A third or subsequent offense is a misdemeanor punishable*  
36 *by imprisonment in a county jail not exceeding six months, or by*  
37 *a fine not exceeding one thousand dollars (\$1,000), or by both*  
38 *that fine and imprisonment.*

39 (2) *A defendant convicted of a violation of paragraph (1) may,*  
40 *in his or her discretion, elect to participate in the education*

1 *program designed and implemented pursuant to paragraph (3) of*  
2 *subdivision (b) of Section 11357.5. If that election is made,*  
3 *execution of the sentence imposed pursuant to paragraph (1) shall*  
4 *be stayed and either an amount less than the total amount of any*  
5 *fine imposed shall be deposited in an escrow account or the person*  
6 *shall perform community service. In determining whether to require*  
7 *a deposit or the performance of community service, the court shall*  
8 *consider the nature of the sentence to be stayed, the defendant's*  
9 *ability to pay a deposit, and the defendant's preference. Upon*  
10 *successful completion of the education program, the case against*  
11 *the defendant shall be dismissed and any moneys deposited into*  
12 *an escrow account shall be returned to the defendant.*

13 *(3) Notwithstanding any other law, a defendant convicted of a*  
14 *violation of paragraph (1) who was granted probation and required*  
15 *to participate in a drug treatment program pursuant to Section*  
16 *1210.1 of the Penal Code, and who does not successfully complete*  
17 *that drug treatment program shall be presumed eligible for*  
18 *participation in any available drug court program.*

19 ~~(b)~~

20 *(c) Unless specifically excepted, or contained within a*  
21 *pharmaceutical product approved by the United States Food and*  
22 *Drug Administration, or unless listed in another schedule,*  
23 ~~subdivision (a) applies~~ *subdivisions (a) and (b) apply to any*  
24 *material, compound, mixture, or preparation which contains any*  
25 *quantity of the following substances having a stimulant effect on*  
26 *the central nervous system, including its salts, isomers, esters, or*  
27 *ethers, and salts of isomers, esters, or ethers whenever the existence*  
28 *of such salts, isomers, esters, or ethers, and salts of isomers, esters,*  
29 *or ethers is possible within any of the following specific chemical*  
30 *designations:*

31 *(1) Naphthylpyrovalerone whether or not further substituted in*  
32 *the naphthyl ring to any extent with alkyl, alkoxy, alkylendioxy,*  
33 *haloalkyl, or halide substituents, whether or not further substituted*  
34 *in the naphthyl ring by one or more other univalent substituents,*  
35 *or whether or not further substituted in the carbon chain at the 3-,*  
36 *4-, or 5-position with an alkyl substituent.*

37 *(2) 2-amino-1-phenyl-1-propanone (cathinone) or variation in*  
38 *any of the following ways:*

39 *(A) By substitution in the phenyl ring to any extent with alkyl,*  
40 *alkoxy, alkylendioxy, haloalkyl, or halide substituents, whether*

1 or not further substituted in the phenyl ring by one or more other  
2 univalent substituents.

3 (B) By substitution at the 3-position with an alkyl substituent.

4 (C) By substitution at the nitrogen atom with alkyl, dialkyl, or  
5 benzyl groups, or by inclusion of the nitrogen atom in a cyclic  
6 structure.

7 (e)

8 (d) This section shall not prohibit prosecution under any other  
9 provision of law.

10 *SEC. 3. Section 1210 of the Penal Code is amended to read:*

11 1210. As used in Sections 1210.1 and 3063.1 of this code, and  
12 Division 10.8 (commencing with Section 11999.4) of the Health  
13 and Safety Code, the following definitions apply:

14 (a) The term “nonviolent drug possession offense” means the  
15 unlawful personal use, possession for personal use, or  
16 transportation for personal use of any controlled substance  
17 identified in Section 11054, 11055, 11056, 11057 or 11058 of the  
18 Health and Safety Code, ~~or the offense of being under the influence~~  
19 ~~of a controlled substance in violation of Section 11550 of the~~  
20 ~~Health and Safety Code.~~ *Code, the misdemeanor offense of using*  
21 *or possessing a synthetic cannabinoid compound in violation of*  
22 *paragraph (1) of subdivision (b) of Section 11357.5 of the Health*  
23 *and Safety Code, or the misdemeanor offense of using or possessing*  
24 *a synthetic stimulant compound in violation of paragraph (1) of*  
25 *subdivision (b) of Section 11375.5 of the Health and Safety Code.*  
26 The term “nonviolent drug possession offense” does not include  
27 the possession for sale, production, or manufacturing of any  
28 controlled substance and does not include violations of Section  
29 4573.6 or 4573.8.

30 (b) The term “drug treatment program” or “drug treatment”  
31 means a state licensed or certified community drug treatment  
32 program, which may include one or more of the following: drug  
33 education, outpatient services, narcotic replacement therapy,  
34 residential treatment, detoxification services, and aftercare services.  
35 The term “drug treatment program” or “drug treatment” includes  
36 a drug treatment program operated under the direction of the  
37 Veterans Health Administration of the Department of Veterans  
38 Affairs or a program specified in Section 8001. That type of  
39 program shall be eligible to provide drug treatment services without  
40 regard to the licensing or certification provisions required by this

1 subdivision. The term “drug treatment program” or “drug  
2 treatment” does not include drug treatment programs offered in a  
3 prison or jail facility.

4 (c) The term “successful completion of treatment” means that  
5 a defendant who has had drug treatment imposed as a condition  
6 of probation has completed the prescribed course of drug treatment  
7 as recommended by the treatment provider and ordered by the  
8 court and, as a result, there is reasonable cause to believe that the  
9 defendant will not abuse controlled substances in the future.  
10 Completion of treatment shall not require cessation of narcotic  
11 replacement therapy.

12 (d) The term “misdemeanor not related to the use of drugs”  
13 means a misdemeanor that does not involve (1) the simple  
14 possession or use of drugs or drug paraphernalia, being present  
15 where drugs are used, or failure to register as a drug offender, or  
16 (2) any activity similar to those listed in (1).

17 ~~SEC. 3.~~

18 *SEC. 4.* No reimbursement is required by this act pursuant to  
19 Section 6 of Article XIII B of the California Constitution because  
20 the only costs that may be incurred by a local agency or school  
21 district will be incurred because this act creates a new crime or  
22 infraction, eliminates a crime or infraction, or changes the penalty  
23 for a crime or infraction, within the meaning of Section 17556 of  
24 the Government Code, or changes the definition of a crime within  
25 the meaning of Section 6 of Article XIII B of the California  
26 Constitution.

27 *SEC. 5. The Legislature finds and declares that this act furthers*  
28 *the purpose of the Substance Abuse and Crime Prevention Act of*  
29 *2000 enacted by Proposition 36 at the November 7, 2000, general*  
30 *election.*